

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRENCE GARRETT,

Plaintiff,

vs.

CIVIL ACTION NO. 09-13141

DISTRICT JUDGE AVERN COHN

MAGISTRATE JUDGE DONALD A. SCHEER

STATE TROOPER ADAMS, et.al.,

Defendants.

ORDER DENYING PLAINTIFF'S APPLICATIONS FOR APPOINTMENT OF
COUNSEL, GRANTING LEAVE TO FILE FIRST AMENDED COMPLAINT AND
DENYING MOTION TO CONFISCATE EVIDENCE

This cause comes before the Court on Plaintiff's Successive Motions For Appointment of Counsel (Docket #3 & #11), to Amend his Complaint (Docket #7, #12 & #15), and to have Evidence Confiscated from Defendants and Preserved by the Court (Docket #6 & #13). These motions were filed between September 3, and September 30, 2009. Even though Plaintiff was given *in forma pauperis* status on September 8, 2009, service of process could not be commenced until Plaintiff provided the court with complete addresses for each defendant he wished to sue (Docket #5). Plaintiff provided these addresses to the Court on October 09, 2009 (Docket #15).

The decision to appoint counsel for an indigent litigant is within the discretion of the district court. LaBeau v. Dakota, 815 F.Supp. 1074, 1076 (W.D. Mich. 1993) (citing Henry v. City of Detroit Manpower Dept., 763 F.2d 757, 760 (6th Cir. 1985), cert. denied, 474 U.S. 1036 (1985)). Appointment of counsel is not a constitutional right. Childs v. Pellegrin, 822 F.2d 1382, 1384 (6th Cir. 1987). This discretion rests upon a consideration of all the circumstances of the case, including the plaintiff's finances, his efforts to obtain counsel, and most importantly, whether the plaintiff's case appears to be meritorious. Henry at 760.

The Court has no funds to pay attorney fees for an indigent litigant in civil matters. Nevertheless, appointment of counsel at this point in the litigation would be premature since service has not been completed and the viability of Plaintiff's claim remains undetermined. If this case survives summary disposition, Plaintiff may again seek appointment of counsel. Accordingly, Plaintiff's Application for Appointment of Counsel is DENIED.

Plaintiff has filed numerous proposed amendments to his claims. Given the number of proposed amendments, a single comprehensive Complaint would serve to clarify the issues in this action. Accordingly, Plaintiff is hereby ORDERED to file an Amended Complaint within 30 days of the date of this order. Plaintiff shall again provide the Court with the names and updated addresses of each defendant named in the Amended Complaint, so that service by the United States Marshal may be effected. Failure to comply with this Order may result in a recommendation for dismissal of the case for want of prosecution.

Plaintiff's Motions to Confiscate and Preserve Evidence is DENIED since service of process has not yet commenced and the viability of Plaintiff's claim remains undetermined. If this case survives summary disposition, Plaintiff may renew this motion.

SO ORDERED.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: November 2, 2009

CERTIFICATE OF SERVICE

I hereby certify on November 2, 2009 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on November 2, 2009: **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217